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Before the Federal Communications Commission
Washington, D.C. 20554

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In the Matter of:

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

Comments of AirTouch Communications

*Proposed Revision of Maximum Collection Amounts for Schools and Libraries and Rural
Health Care Providers*

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INTRODUCTION

AirTouch Communications, Inc., ("AirTouch") hereby submits its comments in response to the Public Notice released May 13, 1998, in the above-captioned proceeding.¹

AirTouch provides a variety of wireless telecommunications services, including cellular and paging, both domestically and internationally. In the Public Notice, the Bureau seeks comment on a proposal to increase the schools and libraries fund requirements for the second half of 1998 by \$423 million dollars over the amount assessed for the first half.²

¹ "Common Carrier Bureau Seeks Comment on Proposed Revision of 1998 Collection Amounts for Schools and Libraries and Rural Health Care Universal Service Support Mechanisms," DA 98-872, CC Docket 96-45 (May 13, 1998). ("Public Notice").

² Public Notice at 4. ("We seek comment on directing the [USAC] to collect no more than \$524 million per quarter for the third and fourth quarters of 1998" - a total of \$1.048 Billion). As the Public Notice observes at 2, a December 1997 Reconsideration Order directed the USAC to collect no more than \$625 million for the first half of 1998, yielding a funding increase of \$423 million dollars.

I. THE PROPOSED REVISIONS UNLAWFULLY DISCRIMINATE AGAINST WIRELESS CARRIERS AND OTHERS WHO DO NOT PAY ILEC ACCESS CHARGES

The ostensible basis for increasing these taxes on telecommunications carriers is that long distance carriers are estimated to enjoy a significant reduction in access charges.³ In a separate statement, Commissioner Furchtgott-Roth asks parties to address, among other things, whether wireless carriers and others who do not pay access charges should still be required to pay proportionately higher fees, despite the fact that they have received no benefits from the proposed access charge reductions.⁴

The Commission's proposed action would unlawfully discriminate against wireless carriers and others who do not accrue any benefits from access charge reductions. Section 254(b)(4) of the Communications Act requires that all contributions to universal service mechanisms be collected on an equitable and non-discriminatory basis.⁵ In the Commission's proposal, the reductions in access charges "offset" the increased burden on long-distance carriers. No such cost reductions "offset" the increased burden on CMRS providers and other carriers who do not pay access charges. While the net burden on long distance carriers is theoretically neutral, the net burden on these other carriers increases. This violates the statutory requirement. It is inequitable for the Commission to raise the

³Public Notice at 2-3.

⁴Public Notice, Statement of Commissioner Harold Furchtgott-Roth, May 13, 1998 at 1.

⁵47 U.S.C. § 254(b).

funding obligation on all carriers based on the premise that certain costs incurred by some carriers, and not others, are being reduced.⁶

In addition, the Commission's calculations demonstrate the inequity of the present system. In the Public Notice and the accompanying Report to Congress, the Commission acknowledges a point that AirTouch has made earlier: that the present system is discriminatory because Incumbent LECs are largely insulated from the costs of universal service contributions.⁷ In the Public Notice, the Commission observes that long-distance carriers pay for most of the local exchange carrier contributions. The result is that those carriers pay 82.5% of the program's costs although, for example, in the first half of 1998 they were nominally responsible for only 28.7% of the 624.5 million in the fund.⁸ This represents a serious flaw in the existing funding mechanism. Accordingly, AirTouch recommends that the existing mechanism simply be replaced with more broadly based end-user surcharges, rather than charges on carriers, to eliminate this discrimination.

⁶It is unclear whether the Commission is simply observing that access charges are expected to be reduced, or whether the Commission is deliberately increasing the "productivity factor" in the access charge regime, thereby driving down access charges with the intent of using that fact as the basis for increased universal service funding obligations. If the latter is the case, that would violate the Commission's previous policy statements that calculation of the productivity factor must be based on three "economically meaningful" criteria regarding actual LEC productivity. See "Price Cap Performance Review for Local Exchange Carriers," Fourth Report and Order, CC Docket 94-1, FCC 97-159, 12 FCC Rcd 16642 (May 21, 1997), para. 5. AirTouch agrees with Commissioner Powell that tying the funding level of any universal service program to reductions in access charges is seriously questionable. See Dissenting Statement of Commissioner Michael K. Powell, "Report to Congress," FCC 98-85, May 8, 1998 at 2.

⁷See Public Notice at 3, n.16; Comments of AirTouch Communications on Report to Congress, January 26, 1998 at 27.

⁸See Report to Congress, FCC 98-85, at para. 22 (2Q 1998 fund expects to receive \$179 M from ILECs, \$266 M from IXC's, \$87 M from CMRS, and \$92.5 M from other = \$624.5 M; $179/624.5 = 28.7\%$).

Even if the Commission attempts to point to reductions in interconnection charges paid by CMRS providers to LECs, this is not sufficient to meet the non-discrimination requirement.⁹ Neither the Public Notice nor the Report to Congress issued the same day demonstrate how these reductions provide “offsets” equal to that of the reductions in access charges. In order to meet the statutory requirement, any “offset” would need to be equal for all telecommunications carriers.

Moreover, the Commission cannot point to reductions in LEC-CMRS interconnection rates (or, for the most part, to access charges) as a source of “new” funding for the schools and libraries program since the reductions are the result of transitioning implicit high-cost support to an explicit fund. In order for such “offsets” to have any value, the Commission must count the same dollar twice. Claiming that increases in the tax burden of the schools and libraries fund are neutralized through these reductions is misleading. Because it would violate the statute, the Commission’s proposed increase should not be adopted.

II. THE COMMISSION’S PROPOSED REVISIONS PERPETUATE MISTAKEN BELIEFS THAT UNIVERSAL SERVICE PROGRAMS CAN BE FUNDED WITHOUT CONSUMERS BEARING THE COSTS

It is fundamentally impossible as a matter of economics for the Commission to tax telecommunications carriers and yet avoid any rate impacts on the services they provide. The Public Notice seems to suggest that the Commission’s proposals will allow the new

⁹See “Report to Congress,” FCC 98-85, May 8, 1998, Attachment E at 3.

schools and libraries fund to increase in size without any new costs to consumers.¹⁰ But even if “consumers’ rates do not rise,” as the Public Notice states, consumers will bear the burden. As Commissioner Chong explained in her separate statement regarding the Joint Board decision, the Commission should make no mistake about the fact that the ultimate contributor to new universal service programs will be consumers.¹¹

It is a fundamental principle that even if a tax is nominally levied on carriers only, the burden of the tax is borne by consumers in addition to the owners and employees of the carriers themselves.¹² Thus, even if consumer rates do not rise, the effect of increased taxes is rather that the consumer enjoys a smaller reduction in long-distance prices than would otherwise be the case.¹³ As Commissioner Furchtgott-Roth explains, the FCC has an opportunity to put more than \$5 Billion dollars back in the pockets of ordinary Americans who purchase telecommunications services.¹⁴

¹⁰Public Notice at 2. AirTouch is puzzled by the Commission’s interest in avoiding “rate churn.” The Public Notice observes that if funding increases were not timed to access charge reductions, carriers might change their rates more than once in the space of a year. Id. But the Commission must certainly expect that, in competitive industries such as long-distance and CMRS, carriers will change rates frequently, offer a number of rate plan options, and constantly adjust to competitive market changes. Whatever the basis of this concern with “rate churn,” it does not suggest a pro-consumer, pro-competitive view.

¹¹Universal Service Recommended Decision, 12 FCC Rcd 87 (1996), Separate Statement of Commissioner Rachelle B. Chong.

¹²See *Comments of AirTouch Communications on Report to Congress*, January 26, 1998 at 19, n.32.

¹³AirTouch has previously explained that taxing certain telecommunications services, such as long-distance, to subsidize others results in deadweight losses of billions of dollars per year. Id. at 20, n.35 (Jerry Hausman study calculates deadweight loss of \$2.25 for every dollar of tax placed on interstate telecommunications services). Moreover, the effect is the same whether the tax is explicit or implicit.

¹⁴Dissenting Statement of Commissioner Harold Furchtgott-Roth, Report to Congress, FCC 98-85, May 8, 1998 at 4.

This is true even if competition, innovation, market growth or other factors are contributing to aggregate rate decreases. The Commission correctly observes that customers of CMRS services are seeing significant reductions in prices notwithstanding new universal service obligations.¹⁵ But this observation begs the question of whether consumers will bear the burden of these new obligations. The answer is, as it must be, that they will, and it is incorrect to suggest otherwise.

As Commissioner Powell points out, it is a fallacy to assume that one can “pay for” new universal service programs to support schools and libraries out of the Commission’s reductions in access charges (or LEC-CMRS interconnection charges), maintain the current level of high cost support, and avoid any net effect to consumers. Because it fails to acknowledge that the reduction in access charges is largely tied to the transition to an explicit high-cost subsidy plan, the Commission’s calculation of the proposed “acceptable” funding increase is misleading.

In the Public Notice, for example, the Commission calculates the funding increase for the schools and libraries program based on an access charge reduction of \$700 million. But in the May 8 Report to Congress, the Commission identifies only a \$35 million net decrease in IXC costs, once new explicit high cost fund payments are taken into account.¹⁶ Particularly given the importance of ensuring that public information about these charges is accurate, the Commission should heed Commissioner Powell’s suggestion to

¹⁵See, e.g., Report to Congress, FCC 98-85, May 8, 1998, para. 27.

¹⁶Report to Congress, FCC 98-85, Attachment E at 5.

“acknowledge that the Act’s addition of various universal service programs to the traditional high cost, low income and other programs will require the overall amount of universal service subsidies to rise relative to the sum of implicit and other subsidies that existed prior to the Act’s passage.”¹⁷

New burdens on wireless carriers, in particular, are not “offset” by reductions in interconnection charges. LEC-CMRS interconnection charges were lowered toward forward-looking cost levels (as the 1996 Act directed) because the previous LEC rates included amounts necessary to support universal service provided by LECs.¹⁸ These amounts were removed from access charges and interconnection rates and instead funded by explicit high-cost universal service programs, to which CMRS carriers contribute.¹⁹

Assuming that this process has taken place,²⁰ the net effect of reduced access charges or interconnection charges and new explicit high-cost payments is neutral - not a net reduction. New obligations to fund the schools and libraries fund are simply a new tax imposed on wireless carriers, the costs of which are not counter-balanced anywhere else. Consequently, any change in LEC-CMRS interconnection charges does not mitigate the

¹⁷Dissenting Statement of Commissioner Michael K. Powell, Report to Congress, FCC 98-85, May 8, 1998 at 2.

¹⁸While access charges may also have been reduced for other reasons, such as increased LEC productivity, any reduction of LEC-CMRS costs toward forward-looking cost levels has been purely to eliminate either excess profits or implicit subsidies for high-cost and low-income service. See, e.g., Comments of USTA, 95-185 and the attached study (March 4, 1996) (explaining how LEC-CMRS interconnection rates include subsidies toward high-cost and low income universal service obligations).

¹⁹See “Report to Congress,” May 8, 1998, para. 27.

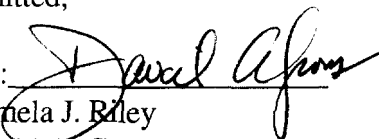
²⁰AirTouch believes some LEC interconnection rates still do not properly reflect forward-looking costs.

fact that new funding obligations to pay for new programs for schools and libraries will be borne by consumers.

CONCLUSION

The proposal to increase schools and libraries funding obligations for all carriers on the basis that other costs of certain (but not all) providers are decreasing is patently discriminatory and violates the Communications Act. In addition, the Commission's proposal is based on an economic fallacy that it can introduce (much less increase) new funding obligations to support connections for schools and libraries without increasing carriers' costs or while hiding the costs from consumers. The proposal should not be adopted and in general, the Commission should not link access charge reductions to funding for the schools and libraries or rural health care universal service programs.

Respectfully submitted,

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